

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

WPMS No.3366 of 2001 (M/S)

decide on 25/08/2003

M/s Embrose Holding Pvt. Ltd. & others vs State of Uttaranchal and others

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-25.08.2003

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.3366 (MS) OF 2001

(Old No. 19806 of 1997)

M/s Embrose Holding Pvt. Ltd. & others Petitioners

Versus

State of Uttaranchal & others Respondents

Hon'ble Rajesh Tandon J.

The present writ petition has been filed challenging the judgment and order of the Chief Controlling Revenue Authority U.P. dated 31st March 1997, passed in Stamp Revision No. 13 of 19995-96.

The brief facts of the case are that petitioner no.1 is a private limited company registered under Indian Companies Act 1956 and petitioner no.2 is one of its directors. It was alleged that the petitioners have purchased 4 acres of land (25 bigha 12 biswa) of khasra no.85/1 of village Fazalpur, Tehsil Kichcha, District Nainital from one Sri Gurpreet Singh son of Sri Harpal Singh through power of attorney in the year 1990.

The petitioners valued the property at the rate prevalent in the area and paid the stamp duty accordingly. It was valued at the rate of Rs. 96,000/- per acre whereas circle rate in the area was Rs.24,000/- to Rs. 32,000/- per acre and as such petitioners have alleged to have paid the stamp duty on the higher amount in the year 1990.

The sale deed of the petitioners was referred to Additional District Magistrate, Nainital under section 47-A(2) of the Indian Stamp Act, on the ground of under valuation. The petitioner has

objected to the said notice and challenged the report of Tehsildar valuing the property at the rate of Rs.1,00,000/- per acre.

The additional District Magistrate has rejected the objections of the petitioner. The petitioner has preferred a revision before the Chief Controlling revenue Authority and the same was dismissed on 31.3.1997, hence the present petition has been filed challenging the orders dated 28.5.1994 and 31.4.1997.

Heard learned counsel for the petitioner Sri J.C. Joshi and learned Standing Counsel Sri N.C. Gupta at great length.

A perusal of the order passed by the Chief Controlling Revenue Authority shows that there has been a complete absence of application of mind towards the pleadings and evidence on the record filed by the parties. The Chief Controlling Revenue Authority has made a capital of the report of the Tehsildar dated April 9, 1991 and has completely ignored the circle rate relied upon by the petitioner in order to prove market rate of the property as contained under section 47-A(2) of the Act.

The learned counsel for the petitioner has also urged that the authorities below have taken into consideration the value of the property as an industrial unit when in point of fact it was an agriculture land and the circle rate is Rs.24,000 to Rs.32,000 per acre and further there was no material to issue notice under section 47A (2) so as to demand the Stamp duty on higher rate:

Section 47-A (2) is quoted as under:

(2) Without prejudice to the provisions of sub section (1) if such registering office while registering any instrument on which duty is chargeable on the market value of the property has reason to believe that the market value of the property which is the subject of such instrument, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for

determination of the market value of such property and the proper duty payable thereon.

As will appear from sub clause (2) of Section 47-A that the market value has to be determined in accordance with the valuation of the property i.e. according to the circle rate.

Section 56 of the Indian Stamp Act empowers the Chief Controlling Revenue Authority to examine the correctness of the order of the court below and he has to decide the matter judicially.

Rule 341 provides the method for the purpose of payment of Stamp duty. Clause (i) of this rule is quoted below:

- (i) Where the subject is land:*
 - (a) in case of Bhumidhari -800 times the land revenue:*
 - (b) In case of Sirdari land – 400 times the land revenue;*
 - (c) where the land is not assessed to revenue but net profits have arisen from it during the three years immediately preceding the date of the instrument 25 time the annual average of such profits;*
 - (d) Where the land is not assessed to revenue and no profits have arisen from it during the three years immediately preceding the date of the instrument 400 times the assumed annual rent;*
 - (e) Where the land is non-agricultural and is situated within the limits of any local body referred to in clause © of sub-rule (i) of Rule 340- equal to the value worked out on the basis of the average price per square metre, prevailing in the locality on the date of the instrument.*

The Said rule has been followed in the case Kaka Singh vs. The Additional Collector and others, AIR 1986 Allahabad 107. The observations are quoted below:

“S. 47-A fills in the lacuna which was found by the Supreme Court in Himalaya House Co. Ltd. V Chief Controlling Revenue Authority (AIR 1972 SC 899). It empowers the Collector to deal with those cases where the parties by arrangement deliberately undervalue the property with a view to defraud the Government of the legitimate revenue by way of stamp duty. It is not correct that the Collector is not empowered to determine on a case being referred to him by the Sub-Registrar under S. 47-A (1), that the market value is in fact less than the minimum value to be determined by R. 341 and to find on that basis whether the transaction sets forth the market value truly or not.”

In the case Board of Revenue U. P. Allahabad vs. Sardarni Vidyawati and another, AIR 1962 SC 1217, the Apex Court has observed as under:

“Section 56 (2) of the Stamp act, 1899, deals with cases where there is a doubt in the mind of the Collector in regard to an instrument which comes up before him under sections. 31, 40 or 41 of the Act as to the construction of the instrument and the provisions of the Act applicable to it. Such doubt itself shows that the point raised for the Collector’s decision is a difficult point of law and from the very nature of the duty to be performed in such circumstances it appears clear that the Chief Controlling Revenue Authority has to decide the matter judicially and would thus be a quasi-judicial tribunal.”

In the case J.H.V. Sugar Corporation Ltd; vs. Chief Controlling Revenue Authority and others. 2001 (2) A.W.C. 1170, the word

“Control” has been defined. It has been held that the expression ‘control’ is a type of supervisory jurisdiction vested in the Chief Controlling Revenue Authority. The observations are quoted below:

“The expression ‘control’ encompasses within its ambit the supervisory jurisdiction vested in the Chief Controlling Revenue Authority. The said authority cannot shut its eyes when the facts are brought before it that by certain machinations, manipulations or otherwise evasion of revenue has taken place thereby causing substantial loss to the State. As has been held in Jagdish Narain vs. Chief Controlling Revenue Authority and others, AIR 1994 All. 371, the sole object of the Act is to increase revenue and its provisions must be construed as having in view only the protection of revenue. Although the provisions contained in the Act impose pecuniary burdens and the Act is a fiscal enactment, yet considering the implications involved therein, its provisions must be given a construction which prevents undue hardship to the subject.

In my opinion, the Chief Controlling Revenue Authority has not examined the case in the light of the objections filed by the petitioner and has not even referred the circle rate and as such the order passed by the respondent number 3 deserves to be quashed.

The writ petition is accordingly allowed. The impugned order passed by the Chief Controlling Revenue Authority is quashed. The revisional Court shall examine the case in the light of the observations made in the body of judgment.

(Rajesh Tandon, J.)

25.08.2003

*Dhyani